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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,769	04/16/2004	James R. Anthony	2835-74916	8807
23643 7590 01/28/2010 BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204				
EXAMINER MACARTHUR, VICTOR L				
ART UNIT 3679		PAPER NUMBER		
NOTIFICATION DATE 01/28/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

indocket@btlaw.com

# Office Action Summary

**Application No.**

10/825,769

**Applicant(s)**

ANTHONY ET AL.

**Examiner**

VICTOR MACARTHUR

**Art Unit**

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 61-76 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 61-76 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/200)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of species II, figures 6-10, remains in effect. The election was made with traverse in the reply filed 10/10/2006.

### ***Specification***

The disclosure is objected to because the specification written description describes applicant's invention in a manner contrary to what is shown in the drawings. More specifically applicant's specification recites a spring 69 that "illustratively acts between top surface 170 of frame assembly 113 and the spring mount or contact portion 117 of lever 114..." (p.16, ll.24-26). Note that as shown in the elected figures applicant's spring 69 does not contact top surface 170. While the recitation technically does not require the spring to contact the top surface or extend therefrom, the phraseology is misleading none the less. See p.3, ll.7-9 of applicant's remarks filed 10/5/2009 wherein applicant attempts to refer to this recitation to overcome the 112 1st paragraph new matter rejection below.

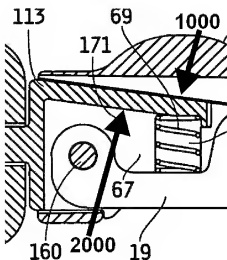
Appropriate correction is required. The examiner suggests replacing the phrase "top surface 170" with "--top wall of frame assembly 113--.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 61-76 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite “the biasing member extending between the top surface of the frame and the lever” (last three lines of claim 61). Applicant has not pointed out where the amended claim is supported, nor does there appear to be a written description of the claim limitations in the application as filed such that this newly added limitation constitutes new matter. That is to say that the above limitations are not recited in the application as originally filed. Note that even the present application fails to provide antecedent basis for the terms in the written description. See marked-up version of applicants figure 8A below which clearly shows that applicant’s originally presented biasing member (69) does not contact the top surface (1000) of the frame (113) much less extend therefrom. Rather, the originally presented biasing member (68) extends between an inner surface (2000) of the frame and the lever.



***Allowable Subject Matter***

Claim 61 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of claims 63, 64 and 76. Note that applicant should be careful to avoid unclear lack of antecedent basis and/or double inclusion problems when constructing such a claim.

***Response to Arguments***

Applicant's arguments with regard to the claim rejections have been fully considered but they are not persuasive.

Regarding the new matter rejection of the limitation "the biasing member extending between the top surface of the frame and the lever" (last three lines of claim 61), applicant argues that the specification provides antecedent basis for this limitation by reciting that spring 69 "illustratively acts between top surface 170 of frame assembly 113 and the spring mount or contact portion 117 of lever 114 to urge the lever to the closed position..." This is not persuasive since the written description term "illustratively acts" is not synonymous with "extending between" such that no antecedent basis is provided thereby. Furthermore the written description recitation appears to be an inaccurate description of applicant's invention and should be amended as described in the objection to the specification above.

Further regarding the new matter rejection applicant argues that applicant's top surface 170 should be taken to refer "generally to the top or top wall of the frame assembly 113". This is not persuasive. The terms "surface" and "wall" are not synonymous in scope. A wall is known to have numerous surfaces and not the other way around. That is to say a claim limitation of a

top surface is much narrower in scope than a top wall. In fact, it is clear that applicants claimed biasing member (69) extends from the bottom surface of the top wall of 113, not from the top surface (170). The biasing member (69) does not contact top surface (170) at any point of its normal operation as originally disclosed. If applicant means for the claim to refer generally to top wall of element (113) rather than specifically to top surface (170) then the term "top surface" must be replaced with "wall". The public cannot be expected to assume claimed terms to have meanings contrary to their commonly accepted definitions, much less guess at which contradictory meanings applicant may mean to employ. What other claim terms are meant to have meanings contrary to what the public has commonly accepted? Does applicant intend for all references of "top" in fact to mean "bottom"? Does applicant intend for left to mean right? How should the public go about determining the true intended scope of applicant's claims? Applicant may act as his or her own lexicographer to specifically define a term of a claim by including a written description that clearly sets forth specific special definitions so as to put one reasonably skilled in the art on notice of the true scope of claims. However, applicant is not permitted to use claim terms contrary to their commonly accepted meanings in an effort to gain patentability of a device based on an enigmatic scope that hides the true meaning of claims from the public. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). Currently, the specification has no specific definition for the claim term "top surface" to mean --bottom surface of top wall--, nor would such a contrary definition give fair notice to the public of the true scope of the claims. Why, if not to purposefully confuse the public, would applicant insist on claiming that spring 69 extend from top surface 170, when in fact spring 69 extends from the bottom surface of the top wall of element 113?

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

January 27, 2010

/Victor MacArthur/  
Primary Examiner, Art Unit 3679